

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1580 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENBHAI CHHIMUBHAI PATEL THROUGH BROTHER

Versus

COMMISSIONER OF POLICE

Appearance:

MR VH DESAI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/05/2000

ORAL JUDGEMENT

#. The petitioner - Bhupendrabhai Chhimubhai Patel, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat, in exercise of powers under Section 3(1) of the PASA Act, dated November

4, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 3 offences registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Learned advocate appearing for the petitioner has not raised many contentions. He submitted that the representation made on behalf of the detenue on November 16, 1999 has not been expeditiously attended to. The delay in considering the representation has affected the right of the detenue of making an effective representation and, therefore, continued detention is bad.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He submitted that the representation dated November 16, 1999 was received by the detaining authority on November 22, 1999. The same was forwarded to the State Government on December 3, 1999 for its consideration and the State Government has thereafter considered the same.

#. Having regard to the rival side contentions in light of the arguments advanced regarding delayed consideration of the representation, it may be noted that the detaining authority has filed affidavit-in-reply and in para 9 thereof, the detaining authority has stated as under.

"9. With reference to para 10 of the petition, I say that the reply to the representation dated 16.11.99 was given on 3.12.99. Therefore, the contention raised in this para is not tenable at law."

Mr. Dave, learned AGP also confirms that the representation was sent on 22nd November, 1999 and forwarded to the State Government on December 3, 1999. The detaining authority had at that point of time become functus officio and as such, he was only required to forward the representation to the State Government. The delay of about 10 days in forwarding the same is not even explained in the affidavit-in-reply. The order was

approved on 8.11.99 and therefore, the detaining authority had become functus officio. This delay has adversely affected the right of the detainee of making an effective representation. The continued detention, therefore, is rendered bad in law. The petition therefore, deserves to be allowed on this ground. (Urmilaben Navnitlal Gandhi v. Commissioner of Police, Surat, 1994 (2) GLH 10(UJ) 10 and Salim Pothiya Belia v. District Magistrate, Mehsana & others, 1994 (2) GLH 10 (UJ) 11).

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated November 4, 1999 is hereby quashed. The detainee - Bhupendrabhai Chhimubhai Patel, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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